CHEAH CHENG LAN

v.

HENG YEA LEE & ORS

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
MOKHTAR SIDIN JCA
ABDUL KADIR SULAIMAN JCA
[CIVIL APPEAL NO: N-02-728-00]
6 FEBRUARY 2001

CIVIL PROCEDURE: *Injunction - Ex parte interim injunction - Life span of 21 days - Whether can be extended beyond 21 days under inherent jurisdiction of court - Rules of the High Court 1980, O. 92 r. 4, O. 29 r. 1(2B)*

CIVIL PROCEDURE: *Jurisdiction - Inherent jurisdiction of court - Ex parte interim injunction - Life span of 21 days - Whether High Court has inherent power to extend life span beyond 21 days - Rules of the High Court 1980, O. 92 r. 4, O. 29 r. 1(2B)*

The appellant prayed, by way of motion, that the High Court's order setting aside an *ex parte* interim injunction be set aside and that the said injunction be continued in force and effect until the final disposal of the appellant's appeal to this court. The appellant cited the case of *Umas Sdn Bhd v. RHB Bank Bhd & Anor* in support. The learned judge therein had cited with favour the decision of *Lim Nyook Yin v. Ultratech Sdn Bhd* wherein it was decided that the High Court had the inherent power to extend an *ex parte* interim injunction order until the disposal of the main suit under O. 92 r. 4 of the Rules of the High Court 1980 ('RHC').

Held:
Per Lamin Mohd Yunus PCA

[1] An *ex parte* interim injunction obtained under O. 29 r. 1(2) RHC shall automatically lapse at the end of 21 days from the date on which it was granted unless sooner revoked or set aside before the expiry of 21 days (r. 1(2B)). Under r. 1(2BA) the life of an *ex parte* interim injunction cannot go beyond the period of 21 days as it must be served on the relevant party within one week from the date it was obtained, and on the day granting the injunction the court must fix the date for the *inter partes* hearing. The date fixed for the *inter partes* hearing must be before the expiry of 21 days.

[2] The court has **no** power to extend the life of an *ex parte* interim injunction beyond the period of 21 days because of the words "shall automatically lapse" in O. 29 r. 1(2B) RHC. The life span of an *ex parte* interim injunction must be limited due to its very nature of it being an *ex parte* order. This is to prevent injustice or to prevent an abuse of the process of the court.

[3] Before the insertion of r. 1(2B), an *ex parte* interim injunction obtained under r. 1(2) remained effective until set aside. Without putting a limit to its life span, the word "interim" can have no concrete meaning. Therefore, r. 1(2BA) had to be brought in.

[4] With the operation of sub-rr. (2B) and (2BA) of O. 29 r. 1 RHC, the life span of an *ex parte* interim injunction has been properly determined. It does **not** therefore admit the use of the inherent powers of the court under O. 92 r. 4 RHC. The court was unable to accept the learned judge's view in *Lim Nyook Yin v. Ultratech Sdn Bhd* that the High Court had such inherent powers to extend an *ex parte* interim injunction beyond its life span of 21 days.

[Motion dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu memohon, melalui usul, bahawa perintah Mahkamah Tinggi yang mengenepikan perintah injuksi interim *ex parte* hendaklah diketepikan dan perintah injunksi tersebut haruslah terus berkuatkuasa dan berkesan sehingga pelupusan muktamad rayuan perayu kepada mahkamah ini. Perayu menyebut kes *Umas Sdn Bhd v. RHB Bank Bhd & Anor* sebagai sokongan. Hakim yang bijaksana di situ telah menyebut dengan memihak kepadanya keputusan di dalam kes *Lim Nyook Yin v. Ultratech Sdn Bhd* di mana telah diputuskan bahawa Mahkamah Tinggi mempunyai kuasa sedia ada untuk melanjutkan satu perintah injunksi interim *ex parte* sehingga pelupusan guaman utama di bawah A. 92 k. 4 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT').

Diputuskan:
Oleh Lamin Mohd Yunus PMR

[1] Sesuatu perintah injunksi interim *ex parte* yang diperolehi di bawah A. 29 k. 1(2) KMT akan secara otomatik luput pada hujung 21 hari daripada tarikh bilamana ianya diberikan kecuali dibatalkan atau diketepikan terdahulu sebelum luputnya 21 hari (k. 1(2B)). Di bawah k. 1(2BA) hayat injunksi interim *ex parte* tidak boleh menjangkau tempoh 21 hari kerana ianya mesti disampaikan ke atas pihak yang

berkenaan dalam tempoh satu minggu daripada tarikh ianya diperolehi dan pada hari pemberian injunksi tersebut mahkamah mestilah menetapkan tarikh untuk perbicaraan *inter partes*. Tarikh yang ditetapkan untuk perbicaraan *inter partes* haruslah sebelum luputnya tempoh 21 hari.

[2] Mahkamah tiada kuasa untuk melanjutkan hayat perintah injunksi interim *ex parte* menjangkau tempoh 21 hari tersebut kerana perkataan "akan luput secara otomatik" dalam A. 29 k. 1(2B) KMT. Hayat perintah injunksi interim *ex parte* mestilah dihadkan disebabkan sifatnya sebagai perintah *ex parte*. Ini adalah untuk menghalang ketidak-adilan atau untuk menghalang sesuatu penyalahgunaan proses mahkamah.

[3] Sebelum kemasukan k. 1(2B), sesuatu injunksi interim *ex parte* yang diperolehi di bawah k. 1(2) kekal berkuatkuasa sehingga diketepikan. Tanpa menghadkan hayatnya, perkataan "interim" tidak mempunyai makna yang kukuh. Oleh itu k. 1(2BA) haruslah dipakai.

[4] Dengan pengendalian kaedah-kaedah kecil (2B) dan (2BA) A. 29 k. 1 KMT, hayat sesuatu injunksi interim *ex parte* telah ditentukan dengan sempurna. Ianya tidak dengan itu mengakui penggunaan kuasa-kuasa sedia ada mahkamah di bawah A. 92 k. 4 KMT. Mahkamah tidak dapat menerima pandangan hakim yang bijaksana dalam *Lim Nyook Yin v. Ultratech Sdn Bhd* bahawa Mahkamah Tinggi mempunyai bidangkuasa sedia ada yang sedemikian bagi melanjutkan suatu injunksi interim *ex parte* menjangkau hayatnya selama 21 hari.

[Usul ditolak.]

Case(s) referred to:
Lim Nyok Yin v. Ultratech Sdn Bhd [1995] 1 CLJ 215 ***(ovrd)***
UMAS Sdn Bhd v. RHB Sdn Bhd & Anor [2000] 6 CLJ 564 ***(ovrd)***

Legislation referred to:
Rules of the High Court 1980, O. 29 r. 1(1), (2), (2B), (2BA)

For the applicant - M Pathmanathan (Sandraleka Asiriah with him); M/s M Pathmanathan & Co
For the 1st & 2nd respondents - Lim Kem Thuan; M/s Lim Kem Thuan & Co

[Appeal from High Court, Seremban; Petition No: 26-1-2000]

Reported by Usha Thiagarajah

JUDGMENT

Lamin Mohd Yunus PCA:

The present motion first came before us on 7 December 2000 but it had to be postponed on an application by the learned counsel for the respondents nos. 1 & 2 on the ground, according to him, that the notice of motion had yet to be served and the notice of hearing for that day was served by way of fax to his office at about 2.42pm the day before. The learned counsel further said that his client ought to be given leave to file an affidavit-in-reply. We then postponed the motion to 5 January 2001.

The applicant/appellant, by this motion prays for an order "that the order of the High Court dated 19 October 2000 setting aside an *ex parte* injunction order dated 29 March 2000 be set aside and the *ex parte* injunction order dated 29 March 2000 continue to be in force and effect" until the disposal of the applicant/appellant's appeal. In other words the effect of the present application is to bring back to life the *ex parte* injunction granted on 29 March 2000 and to continue in full force and effect until the final disposal of the appeal by this court.

The learned counsel for the appellant/applicant, in support of his application, cited the case of *UMAS Sendirian Bhd. v. RHB Bank Bhd. & Anor* [2000] 6 CLJ 564. The learned judge in that case cited with favour the decision in *Lim Nyook Yin v. Ultratech Sdn Bhd* [1995] 1 CLJ 215 and quoted a passage from the judgment of Abdul Malik Ishak J which reads:

> In *Lim Nyook Yin v. Ultratech Sdn Bhd & Anor* [1995] 1 CLJ 215 His Lordship Abdul Malik Ishak J at p. 217 said:
>
> > The proposition that Mr. A Selvanathan has no right to apply for a return date whilst making an application for an *ex parte* interim injunction under O. 29 r. 1(2B) of the RHC and, consequently, that the court has no power to fix a return date, is entirely without merit. The words, as suggested by Mr. A. Selvanathan appearing in O. 29 r. 1(2B) of the RHC especially the expression 'unless sooner revoked or set aside' would, by itself, give the power to the court to set a return date for an *inter partes* hearing. This is the best way for the defendants to revoke or set aside the *ex parte* interim injunction before the expiry of two weeks. ... Now, with the insertion of r. 1(2B) to O. 29 of the RHC, the rules committee must have intended that all *ex parte* interim injunctions be valid for two weeks and return dates be given forthwith, preferably before the expiry of the two weeks to enable the matter to be argued fully. It must also be pointed out that in the *inter partes* hearing, the *ex parte* interim injunction may be further extended *inter partes* until the disposal of the main suit. That the court has such an inherent power to make such an order is beyond dispute (see O. 92 r. 4 of the RHC).

The above passage ends with a note that is capable of supporting the proposition that an *ex parte* injunction can be extended from time to time until the disposal of the main suit notwithstanding that under O. 29 r. l(2B) it remains effective for only two weeks (now amended to 21 days). We think the position should be made clear. For the purpose of the present application, it may be convenient that we repeat the provisions as provided under O. 29 r. 1(1), (2), (2B) and (2BA) of the Rules of High Court 1980.

> (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons counterclaim or third party notice, as the case may be.
>
> (2) Where the applicant is the plaintiff and the case is one of urgency such application may be made *ex parte* by summons supported by an affidavit but, except as aforesaid, such application must be made by summons.
>
> (2A) ...
>
> (2B) Unless sooner revoked or set aside, an interim injunction obtained on an *ex parte* application shall automatically lapse at the end of 21 days from the date on which it is granted.
>
> (2BA) The *ex parte* interim injunction must be served on the relevant party within one week of the date of the order granting the interim injunction and the Court when granting the injunction must forthwith fix a date for *inter partes* hearing to be held before the expiry of the 21 days.

Where the case is one of urgency the plaintiff in the suit may apply to the court *ex parte* for an interim injunction under r. 1(2). Now, the injunction obtained *ex parte* under the said r. 1(2) "**shall** automatically lapse" at the end of 21 days from the date on which it is granted (r. 1(2B)). Rule 1(2B) is prefixed by the phrase "unless sooner revoked or set aside" and this must mean that the life of an *ex parte* injunction remains in force for only 21 days if it is not revoked or set aside before the expiry of 21 days because at the end of 21 days it "shall automatically lapse." Under r. 1(2BA) the *ex parte* injunction "must be served" on the relevant party within one week of the date of the order granting it and the court when granting the injunction "must forthwith fix a date for the *inter partes* hearing to be held before the expiry of the 21 days". Under r. 1(2BA) it is made clearer that the life of an *ex parte* injunction cannot go beyond the period of 21 days. The *ex parte* injunction once obtained it is imperative that it be served within one week from the date it is obtained and on the day granting the injunction the court cannot postpone the fixing of the date of the *inter partes* hearing. It must on that day fix the date

for the *inter partes* hearing and the date must be before the expiry of the 21 days. It is during the period of 21 days that all relevant decisions must be made such as either that it be revoked or set aside because at the end of 21 days it "shall automatically lapse". It is because that the decision to revoke or set aside must be made within the 21 days that the *ex parte* injunction once obtained must be served early (within seven days) so that the relevant parties may make the necessary preparation for appearing in court within the said period. The court has no power to extend the life of an *ex parte* injunction beyond 21 days because of the words "**shall** automatically lapse" (see p. 1353 *Malaysian High Court Practice:* 1998 Desk Edition 1 MLJ). The learned judge in *Lim Nyook Yin* thought otherwise for he said at p. 218 para B:

> It must be pointed out that in the *inter partes* hearing, the *ex parte* interim injunction may be further extended *inter partes* until the disposal of the main suit. That the court has such an inherent power to make such an order is beyond dispute (see O. 92 r. 4 of RHC).

With respect we are unable to accept that the High Court has an "inherent power" to make such an order under the said rule. If we may reproduce below O. 92 r. 4 of RHC. It reads:

> For the removal of doubts it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

The very nature that an interim injunction being *ex parte* we are of the view that in order to prevent injustice or to prevent an abuse of the process of the court that its life span must be limited. Before the insertion of r. 1(2B) in October 1993 (P.U.(A) 364/1993), an *ex parte* interim injunction obtained under r. 1(2) remained effective until set aside. Without putting a limit to its life span, the word interim can have no concrete meaning and it may even be open to abuse. It was further found necessary to tighten up the screws so as the application of r. 1(2B) would be more meaningful, so r. 1(2BA) had to be brought in. This new rule does not tolerate delay so that it spells out the time limit within which the interim injunction must be served. Also, on the day the *ex parte* interim injunction is granted, the court granting it must "forthwith" fix a date of hearing *inter partes* and that it must be held "before the expiry of the 21 days." It is beyond doubt that r. 1(2BA) stresses the urgency and speedy disposal of the matter. With the operation of sub-rr. (2B) and (2BA), the life span of an *ex parte* injunction has been properly determined. It does not therefore admit the use of the inherent powers of the court as provided under O. 92 r. 4.

For the above reasons we dismissed the motion with costs.